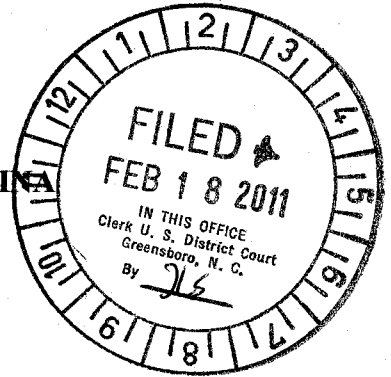


UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Pro se [Non-prisoner] Complaint Form



JIHUI ZHANG, Plaintiff,)
)
v.)
)
Federation of State Medical Boards,)
)
National Board of Medical Examiners,)
)
Prometric,)
)
Defendant(s).)

Civil Action No. 1:11 CV 129
(to be assigned by the Clerk)

JURY TRIAL DEMANDED

COMPLAINT

I. JURISDICTION

Diversity of citizenship, 28 U.S.C. §1332

II. PARTIES

A. Plaintiff

Name of Plaintiff: Jihui Zhang
Address: 102 Rowe Road
Chapel Hill, NC 27516

B. Defendant(s)

Name of Defendant: Federation of State Medical Boards (FSMB)
Current Address: 400 Fuller Wiser Road, Suite 300
Euless, TX 76039

C. Additional Defendants

National Board of Medical Examiners (NBME)

3750 Market Street

Philadelphia, PA 19104-3102

And

Prometric

1501 South Clinton Street

Baltimore, MD 21224

III. STATEMENT OF CLAIM

1. On December 07, 2009, I scheduled my Step 3 of the United States Medical Licensure Examinations (USMLE) online at Prometric's website (<http://www.prometric.com>). USMLE Step 3 is a two-day test cosponsored by the Federation of State Medical Board (FSMB) and the National Board of Medical Examiners (NBME). I was given two test dates of January 25 (Monday) and 28 (Thursday), 2010 (see Exhibit A for my scheduling confirmation). I took the test as scheduled, and everything went well as expected.
2. On February 17, 2010, I received my score report for USMLE Step 3 via email. I was shocked to see a FAIL score of 68. Without delay, I submitted a request for score recheck on the same day by following USMLE policy. My request was sent to FSMB via USPS Priority Mail with the required fee of \$55.00. On February 22, 2010, I contacted FSMB by phone to follow up on my score recheck. The staff member at FSMB who answered my call was apparently surprised when I told her that I took the test on two non-consecutive days (January 25 and 28). She informed me unequivocally that USMLE policy requires Step 3 be taken on two consecutive days; in my case it would have to be January 25 and 26. Recognizing the potential impact of the

III. STATEMENT OF CLAIM - continued.

unusual scheduling on my score, she promised me that she would inform her supervisor about it and get back to me later on the same day. I gave her my cell phone number.

3. Without hearing from her on February 23, 2010, I contacted FSMB again on the next day. This time, I talked to a different lady and she seemed not concerned at all about my unusual test scheduling. She told me my request for score recheck had been processed and the targeted date for release of my score recheck result would be March 29, 2010. I checked the USMLE 2010 Bulletin and found that the way I was scheduled to take Step 3 was indeed in violation of USMLE policy (see Exhibit B for the relevant section of 2010 USMLE-Bulletin). Hoping that the score recheck would vindicate me, I waited for the result without taking further actions.
4. I received my score recheck result via email on March 26, 2010, stating that scores were found to be accurate as originally reported. Please note, per FSMB and NBME, the score recheck is done by their automated QA software, not manually. Since then, I have contacted NBME numerous times to express my concerns: a) My test score too low to reflect my preparation and actual performance on the test days (68, a minimal passing score is 75; considering it only took me six months to pass both Step 1 and 2 with solid scores, and I spent over a year to prepare for Step 3); b) The potential impact of non-consecutive scheduling on scoring my test; c) Specifically I request NBME to further investigate my Step 3 score by manually checking if there were irregularities between Day 1 and Day 2 of my test data (I suspected that part of my test data was lost or not counted by their automated scoring system). NBME first agreed to manually check my score but later reversed their decision by the reason that they only offer manual score recheck to US medical graduates; because I am a foreign medical graduate, they would not do it for me. They insisted that my two non-consecutive day scheduling was not in

III. STATEMENT OF CLAIM - continued.

violation of USMLE policy and further stated that such scheduling would not affect my score at all (see Exhibits C & D for responses from Ms. Toys Bagley and Ms. Mary E. Patterson).

However, when contacting the Prometric Testing Center about my unusual scheduling on April 12, 2010, I was clearly told that if one had taken Step 3 on two non-consecutive days as I was scheduled, he/she would have had to retake the test to comply with USMLE policy. There was no doubt that Prometric had violated the USMLE policy on Step 3 test scheduling.

5. I once again turned to FSMB for answers. Ms. Debbie Cusson, the supervisor of FSMB's Examination Service, informed me on April 26, 2010 by phone (an conversation lasted over 70 minutes) that they stopped offering manual score recheck several years ago. She further explained to me why my unusual scheduling in no way would not affect my score, but I was not convinced and told her that I would stop searching for answers. Ironically, immediately after the phone conversation I received an email from Ms. Patterson of NBME saying that neither FSMB nor NBME would do anything further to address my concerns.
6. Helpless and frustrated, I hired Mr. Randolph M. James to represent me. He wrote demand letters to FSMB clearly stating the need for investigating my test scheduling and test score (see Exhibits E & F). FSMB failed to investigate why Prometric scheduled my Step 3 test on two non-consecutive days, but continued to insist that such scheduling had no effects on my test score. Again, FSMB denied the request for investigating my score by a manual recheck, completely ignored my legitimate concerns (see Exhibits G & H).
7. Very recently, I found out how examinees' Step 3 test data are actually handled at Prometric testing centers. After a Step 3 exam ends, Prometric "electronically bundles the examinee's Response Record and other Response Records from the testing center, encrypts the data and

III. STATEMENT OF CLAIM - continued.

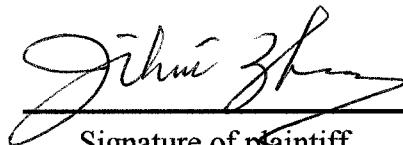
transmits it over secure lines to Prometric's data center.” However, in my conversation with Ms. Cusson on April 26, 2010Ms, she told me without ambiguity that Prometric testing center does not handle examinees’ test data because on both days of Step 3 test, an examinee’s answers to test questions are recorded and simultaneously transferred to NBME. She stated that the computer-based test system is 100% automated and fail-proof. Clearly, that was simply a lie that Ms. Cusson employed to convince me that there are no way test scheduling can affect test scores. The fact of electronically combining and bundling test data from two separate days at the Prometric testing center could easily go wrong, especially when the test was done on two non-consecutive days. This also explains why there are strict rules in USMLE policy (with certain exceptions) on two-consecutive scheduling. Now, I firmly believe that my Step 3 test data were not properly handled by Prometric. Both FSMB and NBME have a responsibility to investigate it in a fair and subjective manner.

8. In summary, Prometric violated USMLE policy by scheduling my USMLE Step 3 test on two non-consecutive days; as a result it led to their mishandling of my test data and the inaccurate scoring of my test by NBME. Both FSMB and NBME breached their internal policies and refused to investigate why I was scheduled on two non-consecutive days and how my test data were handled at the Prometric testing center where I took the test. They deprived my civil right as an examinee who is entitled to all services they offer by refusing to manually check my test score. I undoubtedly believe that, at this juncture, a manual score recheck is the only possibly way to find out if my test was scored accurately. The fact that FSMB repeated denied my legitimate request for a manual score recheck is drastically contradicting its value of “Incorporates honest, ethical behavior, reliability and transparency in all its operations and services.”

IV. RELIEF (State briefly and exactly what relief you want from this court)

The Defendants' actions have been tremendously detrimental to my career advancement. A fail score on Step 3 potentially destroyed my chance to residency training in the US, at least delayed my training by two years even if Defendants find now that there is an error in scoring my test and subsequently correct it. Their actions have made me suffering from significant financial loss (without an income). Therefore, I pray for judgments for a fair and subjective investigation into my USMLE Step 3 score by the Defendants and against the Defendants in the sum of \$195,000.

Signed this 18th day of February, 20 11.



Signature of plaintiff

102 Rowe Road

Chapel Hill, North Carolina 27516

Address

919 942 1880 (Home), 919 260 3715 (Mobile)

Telephone number